

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DAVID McCLOY,

Plaintiff,

v.

Case No. 07-13839

Honorable David M. Lawson

Magistrate Judge Michael J. Hluchaniuk

CORRECTION MEDICAL SERVICES,
LAFLER, RIVARD, WASHINGTON, DOVE,
PATTON, AMY BURTON, DIANE TEMPLE,
WILKENS, TROMBLEY, THOMPSON,
MORRIS, PEUTRICH, and CHAPELO,

Defendant.

**ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND
RECOMMENDATION IN PART, OVERRULING PLAINTIFF'S OBJECTIONS,
AND DENYING PLAINTIFF'S MOTION FOR RELIEF FROM JUDGMENT**

The matter is before the Court on the plaintiff's objections to a report filed by Magistrate Judge Michael J. Hluchaniuk recommending that a motion from the plaintiff that the Court took as a motion for relief from judgment be denied. The plaintiff initially filed his complaint in this Court under 42 U.S.C. § 1983 alleging several violations of his constitutional rights by employees of Correction Medical Services (CMS) and the Michigan Department of Corrections during the plaintiff's incarceration as a Michigan prisoner. The Court dismissed the case on March 31, 2011. On October 17, 2011, the plaintiff filed a document entitled "Rewrite of Case by Direction of Judge Lawson," which the Court construed as a motion for relief from the judgment of dismissal. The Court referred the motion to Magistrate Judge Michael J. Hluchaniuk, who had handled the pretrial management. Judge Hluchaniuk filed a report on June 12, 2012 recommending that the motion be denied.

On June 29, 2012, the plaintiff filed a document entitled “Response to Motion From Judgment Recommendation.” The Court will consider that paper as objections to the magistrate judge’s recommendation. Thereafter, the plaintiff filed seventeen pages of additional exhibits. The defendants also responded to the plaintiff’s “objections.”

A district court must conduct a *de novo* review of the parts of a magistrate judge’s report and recommendation to which a party objects. 28 U.S.C. § 636(b)(1). The district “court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate” judge. *Ibid*. The requirement of *de novo* review “is a statutory recognition that Article III of the United States Constitution mandates that the judicial power of the United States be vested in judges with life tenure.” *United States v. Shami*, 754 F.2d 670, 672 (6th Cir. 1985). Accordingly, Congress enacted 28 U.S.C. § 636(b)(1) to “insure[] that the district judge would be the final arbiter” of a matter referred to a magistrate judge. *Flournoy v. Marshall*, 842 F.2d 875, 878 (6th Cir. 1987).

The Court has reviewed plaintiff’s objections. Nothing in the objections convinces the Court that the magistrate judge erred in his recommendation. As noted above, the plaintiff filed a document that the magistrate judge properly construed as a motion seeking relief from the judgment of dismissal. The magistrate judge recommended the motion be denied. The Court has reviewed all the filings, agrees with the magistrate judge’s conclusions, and adopts them as its own. As the magistrate judge explained, the plaintiff offers nothing new in his additional filings since the judgment was entered, and a motion for relief from judgment is not to be used to relitigate issues that were addressed by the earlier judgment.

Accordingly, it is **ORDERED** that the plaintiff’s objections [dkt. #200] are **OVERRULED**.

It is further **ORDERED** that the report and recommendation of the magistrate judge [dkt. # 199], and its findings and conclusions, are **ADOPTED**.

It is further **ORDERED** that the motion for relief from judgment [dkt. #193] is **DENIED**.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Dated: August 24, 2012

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on August 24, 2012.

s/Deborah R. Tofil
DEBORAH R. TOFIL